P. RIGHT TO COUNSEL AND WAIVERS DURING CUSTODIAL INTERVIEWS

The cases reviewed on the attached pages address the *Miranda* issue. The Court, in determining the admissibility of a statement obtained from a defendant, must first ascertain if the statement was lawfully obtained. The arresting officer should assure the court that the defendant's Fourth Amendment Right of unlawful seizure was not violated (i.e., there was probable cause to arrest or the suspect's consent was obtained). Secondly, the Court will determine if the defendant received a proper warning (the reading of his rights), and if a proper waiver followed that warning. Thus, the State must establish the fact that the defendant's Fourth (seizure of an individual), Fifth (compelled self incrimination) and Sixth (right to counsel) Amendment rights were not violated and, if these rights were waived, they were waived knowingly and intelligently.

Alaska has adopted (HUNTER v State) the **objective, reasonable standard** approach and not the focus of attention approach to determine when a person is in custody. Three facts are used to determine when a reasonable person would feel free to leave and/or break off police questioning: (1) the manner and scope of the actual interrogation; (2) events which took place before the interrogation, including those which explain how and why the defendant came to the place of questioning; and (3) what happened after the interrogation. If a person is not in custody according to the above guidelines, *Miranda* warnings need not be given.

Alaska has recently added an additional requirement (see Harris below) of tape recording the entire statement. The criteria are if a person is (1) in custody; and (2) at a place of detention, then the entire statement must be recorded. Places of detention could include police cars, jails or police stations. It is still an "open question" whether the defendant has the right to waive having his statement recorded. The Court interpreted the Harris case based on the Alaska Constitution not the United States Constitution. The Alaska Constitution affords more individual rights than the United States Constitution.

When a suspect invokes his right to speak with an attorney, all interrogation must cease until the suspect has an opportunity to speak with his attorney. In addition, no interrogation can resume until the attorney is PRESENT, even if the suspect is readvised of his *Miranda* rights. If the suspect initiates communication with law enforcement officials on his own, then the above rule does not apply.

RIGHT TO COUNSEL AND WAIVERS DURING CUSTODIAL INTERVIEWS
SELECTED CASES

Selected Juvenile Cases are Listed Separately Below

KAUPP v Texas (confession obtained by exploitation of an illegal arrest) bulletin no. 294. At 3:00 a.m. police are allowed entry into a residence by the father of the 17-year old suspect in a murder case. They go to the suspect's bedroom, awaken him by saying "we need to go and talk." He replies OK. The police put him in handcuffs and take him from his residence to a patrol car. The suspect is dressed only in his boxer shorts, and a T-shirt; he is shoeless. This is in the month of January. Suspect is brought to the police station, placed in an interview room and advised of his *Miranda* rights. He at first denies and them admits to a "part of the crime." It is established that the police did not have enough probable cause to arrest the suspect. The question here is did the police violate the suspect's Fourth Amendment right against unreasonable seizure. The answer is "yes" and the confession must be suppressed.

HUNTER v State (Adoption of the Objective Reasonable Standard for Determining Custody) (no bulletin). Alaska established the **objective, reasonable person standard** for determining whether a person is in custody. Courts examine three groups of facts to determine whether a reasonable person would feel free to leave and break off police questioning: (1) the manner and scope of the actual interrogation; (2) events which took place before the interrogation, including those which explain how and why the defendant came to the place of questioning; and (3) what happened after the interrogation.

WARDEN v ALVARADO (Non-Custodial Interview of Juvenile at Police Station Does Not Require Miranda Warning) bulletin no. 281. Victim was killed during attempted car jacking. Several months' later police developed Alvarado (who was 17 YOA at the time), as a suspect. Detectives contacted both him and his parents and asked him to come to the police station. Upon arrival the detectives informed the parents that the interview would not "take very long." The parents waited in the lobby and Alvarado was taken to an interview room. The entire interview, which was tape-recorded, lasted about two hours. During the interview Alvarado was asked on several occasions if he wanted to take a break; he declined. Alvarado admitted his involvement in the homicide and also that he had assisted the "shooter accomplish" hide the gun. He was never advised of his Miranda rights. After the interview he left the police station with his parents. Several months later he was arrested and charged with the murder. For purposes of Miranda, Alvarado was not in custody. The test is (1) circumstances surrounding the interview and (2) would a "reasonable person" feel free to terminate the interview and leave. The court also said that their prior decisions regarding Miranda have not mentioned a suspect's age, much less mandated its consideration.

Missouri v SEIBERT (Question first, give the warnings, and repeat questions violate Miranda) bulletin no. 284. Police said based on their training they question the defendant. Then, when they get a confession they give MIRANDA warnings and question again until they get the same answers. Court ruled that when the defendant is in custody the defendant must be given MIRANDA warnings before questioning.

CRAWFORD v State (Question first, give the warnings, and repeat questions violate Miranda) bulletin no. 287. Crawford was stopped for expired registration. He denied he had been drinking and gave consent to search his vehicle for weapons, drugs or alcohol. Police verified he was driving with a revoked license and arrested him for DWLS. During pat-down officer felt what appeared to be a smoking pipe. Crawford gave officer consent to remove the pipe. When asked he said that he had a small tin of marijuana on his person. When asked again about drugs in his car he said that he had both marijuana and cocaine under the front seat. He was then given his Miranda warning and repeated what he had said about drugs in the car. Our court ruled like Seibert that when suspect is in custody you give the warnings prior to questioning.

State v BATTS (In certain circumstances, statements taken in violation of MIRANDA can be used for impeachment purposes) bulletin no. 332. After he was arrested for homicide, the police interviewed BATTS. During the course of the interview, he asserted his Fifth Amendment right to silence a total of eighteen times. The police continued the questioning and BATTS made some incriminating statements. The trial court suppressed the statements because of MIRANDA violations. BATTS took the stand at his trial which resulted in a "hung" jury; the second trial also ended with a hung jury. The State appealed the trial court's

decision to suppress arguing that, because BATTS had taken the stand, his statements should be allowed to impeach his testimony. The court of appeals ruled that it permits this impeachment in cases were the (MIRANDA) violation was neither intentional or egregious – by which we mean a violation that would have been obvious to any reasonable police officer.

KALMAKOFF v State (Violation of Miranda in first two statements does not require suppression of statements taken in 3rd and 4th interviews) bulletin no. 334. **REVERSED BY SUPREME COURT SEE BULLETIN 356.** Police violates defendant's Miranda Rights when they interviewed him twice on the same day. He was allowed to go back to school and ultimately home. Police contacted him at his home, and in the presence of his grandparents, he admitted to the murder. Police also interviewed him on the following day, when they arrested him. He argued that because of the Miranda violation on the first two interviews, any information obtained thereafter, even if he was advised of Miranda, must be suppressed because of the poison tree doctrine. Court said statements were allowable because the defendant did not make any admissions about the murder during the first two interviews. He did admit to other violations (minor consuming alcohol and taking a gun from a residence) during the first two interviews but made no admissions about the murder.

KLEMZ v State (Custodial-interrogation statements elicited without Miranda warnings will negate any post-interrogation Miranda statements) bulletin no. 324. KLEMZ, on probation for felony driving while under the influence, arrived at his probation officer's office smelling of alcohol. One of his conditions of release on probation was to refrain from using alcohol. KLEMZ consented to taking a breath test; he was .221. The probation officer arrested KLEMZ for violating conditions of his probation, searched and handcuffed him. The probation officer then asked KLEMZ how he had gotten to the probation office. KLEMZ stated he had driven his truck and that he had parked in the parking lot. Kenai police were then called to the office. The officer gave KLEMZ the Miranda warning and once again KLEMZ admitted that he had driven his truck to the probation office. The officer arrested KLEMZ for felony driving while under the influence. He argued that both the statement given to the probation officer and the later statement given to the police officer violated his Miranda rights. The court agreed: The probation officer's initial question (without Miranda) was reasonably likely to elicit an incriminating response and the police officer's follow-up question was almost certain to do so. Thus, the post-warning statements (made to the police officer) were no more admissible then his pre-warning statements made to the probation officer.

ROCKWELL v State (Miranda warnings are required when traffic, or investigatory stop ripens into full-blown custody) bulletin no. 325. Police respond to a two vehicle accident. There are 4 interviews involved in this case: (1) on the street questioning; (2) ROCKWELL patted-down and put in the back of the patrol car that he could not get out of; (3) interview in the patrol car and en route to a police sub-station and (4) at another police station where he is placed under arrest and for the first time advised of his Miranda rights, at which time he asked for a lawyer but then declined to call one. The officer asked if he would still talk to him and he agreed. As to 1 – the street interview – that is admissible. As to 2 - he was probably in custody for purposes of Miranda because he was patted-down and put in a locked car (this issue was sent back to the lower court for an additional hearing); (3) he was in custody because the officer informed him that he was being transported to a sub-station for further testing. The officer did not ask him, just told him he was taking him to a sub-station. He was in custody at this time. And (4) once he asked for a lawyer all questioning must stop unless initiated by the defendant.

EDWARDS v Arizona (Right to Counsel - Custodial Interrogation) bulletin no. 48. Before the defendant talked with police officers, he requested the jailer obtain counsel for him. The police, unaware of the defendant's request to the jailer, gave proper warning and, in doing so, obtained a waiver from the defendant. The defendant's confession was ruled inadmissible since he was denied right to counsel.

UNGER and CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his *Miranda* rights and voluntarily provided a statement to the police, the statement was suppressed because of the illegal seizure of the defendant.

SHEAKLEY v State (Right to Counsel - Voluntary Waiver) bulletin no. 55. The defendant (while in custody at the time) requested an attorney. The police were unsuccessful in their attempts to obtain one. When informed of this fact, the defendant requested to speak with the arresting officer so he could "tell his side of the story." The arresting officer again provided the appropriate warning and obtained a statement. The statement was admissible because the defendant initiated contact after requesting an attorney.

MUNSON v State (Right to Remain Silent During Custodial Interrogation) bulletin no. 301. Anchorage police go to Portland, OR, to take custody of MUNSON who has been charged with an Alaska homicide. MUNSON is one of four defendants in the case that involves the murder of Morgan GORCHE who had been killed in retaliation for allegedly, molesting a three-year-old girl. A few minutes into the interview, MUNSON asked if "Sam" (one of the co-defendants) would know that he (MUNSON) was talking to the police. When he was informed that at some point everyone would know, MUNSON said: "Well I'm done talking then." The officer proceeded with the interview, which also included playing part of a taped interview with "Sam." MUNSON eventually confessed to his participation in the murder. MUNSON's statement must be suppressed because once he attempted to cut off questioning the police must "scrupulously" honor his request to remain silent. The only time this would change is if MUNSON himself initiated contact with the police later.

METIGORUK v Anchorage (Statement to Private Security Guard) bulletin no. 62. Private security guards are not required to give *Miranda* warnings to individuals they arrest unless the guards are working as government agents.

COPELIN v State and MILLER v Anchorage (Right to Counsel Prior to Breathalyzer) bulletin 64. Defendant had the right to consult an attorney immediately after arrest and prior to Breathalyzer. The officer should have allowed the defendant at least fifteen minutes to make contact with an attorney before requiring him to submit to Breathalyzer.

Oregon v BRADSHAW (Confession Given by Defendant) bulletin no. 74. The defendant in this case originally requested an attorney then withdrew that request by initiating contact with the police. The police had honored the defendant's request until he initiated contact.

ALILI v State (Knowing and Intelligent Waiver of Rights) bulletin no. 77. Although the officer gave warning to the defendant (a foreigner), he failed to ask the defendant if he understood (knowing) his rights. The statement was ruled inadmissible.

Minnesota v MURPHY (Statement to Probation Officer Without *Miranda* Warning) bulletin no. 80. As a condition of parole, the defendant was compelled to visit his parole/probation officer and to participate in a treatment program for sexual offenders. He was ordered to report to his probation officer as directed and be truthful with the officer in all matters. During a session with the treatment counselor, he admitted that he was responsible for a rape-murder that had occurred several years prior to this particular paroled offense. The counselor told Murphy's parole/probation officer who ordered him to her office and confronted him with his admissions. Murphy said he "felt like calling a lawyer," however, the parole/probation officer continued the interview, which resulted in Murphy admitting his involvement in the prior case. The statement was admissible because the court felt this was a "non custodial" interview and that Murphy had not been compelled to make the statement.

JAMES v State (Probation Officer Cannot Force Defendant To Give Up 5th Amendment) bulletin no. 270. The defendant was convicted of sexual assault in the second degree and sentenced to ten years with four suspended on the condition he participate in a sex offender program while incarcerated. He told the therapist "I'm not going to talk about this because basically I didn't do it and I'm under appeal." He was charged with violation of his probation and the four-year probation was revoked. The court said he could not be compelled to give evidence against himself. Not only that, he might have put himself in a position where the State could have charged him with perjury.

FARRELL v Anchorage (Right to Counsel Prior to Breathalyzer) bulletin no. 84. The defendant, in this case, had the right to contact an attorney before submitting to Breathalyzer.

DEPP v State (Right to Counsel - Voluntary Waiver) bulletin no. 87. Although the defendant was advised by his attorney not to talk to the police, he elected to do so and provide a statement. The interview was conducted at the defendant's office. He was not in custody at the time of the interview.

SMITH v Illinois (Knowing and Intelligent Waiver of Rights) bulletin no. 89. Although the defendant replied, "Yeah, I like to do that" when advised of his right to counsel during the warning, the officer continued to read the remaining warning and elicited a waiver. The Court ruled that the officer should have stopped all questioning until the defendant obtained counsel.

HAMPEL v State (Right to Counsel During Custodial Interrogation) bulletin no. 97. When defendant inquired about obtaining a lawyer, the officer informed him it would be somewhat difficult so the defendant proceeded to provide a statement. The Court ruled the statement inadmissible since the officer should have ceased all questioning until the defendant obtained counsel.

STEPHAN and HARRIS v State (Mandatory Recording of Statements From Persons in Custody) bulletin no. 99. Recording of the entire interview, not part, was required since the interview was conducted at a place of detention. This ruling was based on the Alaska Constitution that provides for more individual rights than the United States Constitution.

STATE v AMEND (Recording of Statement Not Required if Person is Not at A Place of Detention) bulletin no. 353). Kenai police responded to a shoplifting call at a convenience store. The clerk had furnished a description and the arriving officer saw the suspect outside. Suspect AMEND admitted the theft and gave the officer consent to search his person. Stolen food was discovered as well as drugs. AMEND admitted that it was his intention to sell the drugs. AMEND argued: (1) When the drugs were found the officer should have given him fresh Miranda warnings and (2) his statements should be suppressed because the officer did not record them. Court ruled that no "fresh" Miranda warning was required and that AMEND was not at a place of detention so mandatory recording was not required.

Rhode Island v BURBINE (Knowing and Intelligent *Miranda* Waiver) bulletin no. 104. After arresting the defendant for burglary, the police developed information that he may have been involved in a homicide that occurred in another city. The defendant's sister contacted an attorney who was representing the defendant in other criminal cases, and the attorney responded by contacting the police. The police officer informed the attorney that they would not be interviewing the defendant, when, in fact, a statement had been provided by the defendant regarding his involvement in the homicide. The statement was ruled admissible because the police had given the defendant the *Miranda* warning and the defendant acknowledged his understanding and waived his right to counsel.

Michigan v JACKSON and BLADEL (The Right to Counsel During Custodial Interrogation) bulletin no. 105. At the arraignment, the defendant requested counsel. Subsequent statement taken after *Miranda* warning was suppressed.

PLANT v State (Right to Counsel - Voluntary Waiver) bulletin no. 107. On the day of his arrest and arraignment, the defendant exercised his right to remain silent which police scrupulously honored. The following day, the defendant initiated contact with police and was given the *Miranda* warning. The police obtained a waiver and the defendant provided a statement. The statement was admissible because the defendant gave a knowing and intelligent waiver.

MCLAUGHLIN v State (Entrapment - Right to Counsel and to Remain Silent) bulletin no. 113. When an officer receives calls from a defendant awaiting trial, Sixth Amendment rights do not protect the defendant when the defendant, now suspect, embarks on new criminal ventures, especially when the defendant initiated the contacts.

LeMENSE v State (Investigative Seizure of Person and Luggage at Airport) bulletin no. 117. Investigative stop of a suspected drug courier upheld because the suspicion for the stop was reasonable (unlike State v Garcia), and a reasonable person would have concluded that the suspect was free to terminate the encounter and walk away. Conversations with the suspect developed further suspicion that justified

subjecting luggage to a drug detecting dog search that alerted on the bag and application for a warrant for the luggage.

WEBB v State (Involuntary *Miranda* Waiver) bulletin no. 120. A *Miranda* waiver cannot be coerced by seizure and retention of a person's property. In this case, a driver's license was held and would be returned only when the suspect went to the police department and gave a statement. The suspect's right to remain silent was balanced by his loss of personal property (driver's license) and the knowledge that he would have to drive illegally if he did not comply. THIS CASES REVERSES BULLETIN NO. 106.

Arizona v ROBERSON (Right to Counsel During Custodial Interrogation) bulletin no. 124. Once an individual states that he wants an attorney, all interrogation must cease until an attorney is present or the defendant initiates contact with the police. Advisement of new *Miranda* rights for a suspect who has not seen counsel, does not allow new interrogation without the presence of the individual's attorney. Even though the second interrogation was initiated to discuss an unrelated crime, a defendant still cannot be interrogated, even with fresh *Miranda* warnings, if he invoked his right to have an attorney present during the initial interrogation.

THIEL v State (Right to Counsel Prior to Commencement of Adversarial Proceeding) bulletin no. 125. A suspect who is not under arrest, formally charged, or seized cannot bar police initiated contact between an informant and the defendant by invoking his right to counsel during an investigative stop. In this case, a "GLASS" warrant was obtained to record conversations between the defendant and the informant. During this event, there was no actual interference with the defendant's efforts to consult an attorney nor impairment of the attorney/client relationship.

THOMPSON v State (Non-Custodial Interrogation) bulletin no. 128. Police are not required to give *Miranda* warnings for non-custodial interrogation, as long as the suspect knows he or she is free to break off the interrogation and leave at any time.

ZSUPNIK v State (Right to Contact Relative Prior to Administration of Breath Test) bulletin no. 142. During the 20-minute observation period prior to administration of the breath test, the suspect has the right to contact an attorney or any relative or friend. This right is absolute.

***NOTE**: This case reverses a previous appeal's decision that was made in error.*

State v MURRAY (Non-Custodial Interrogation) bulletin no. 148. This case has reaffirmed the "objective, reasonable person standard" for determining whether a person is in custody. In this case, the suspect agreed to be interviewed several days in advance, selected the place to be interviewed, was advised he could terminate the interview at any time and was also told he would not be arrested at this time. *Miranda* warnings were not given.

REEKIE v Anchorage (Right to Consult Privately with Attorney Prior to Breathalyzer Test) bulletin no. 150. A DWI arrestee is not entitled to complete privacy in communicating with counsel (in order to maintain the 20-minute mandatory observation period prior to taking the breath test), but police have a duty to take affirmative steps to ensure a reasonable opportunity to converse privately. These steps could include turning off the tape recorder and assuring the arrestee that any statements overheard could not be used against him.

MINNICK v Mississippi (The Right to Counsel During Custodial Interrogation) bulletin no. 152. The defendant, who was in custody and being interviewed, invoked his right to consult with an attorney and did so several times. Later, at another interview initiated by officers, he was advised of his *Miranda* rights again and during this subsequent interview, he incriminated himself. This subsequent confession was suppressed because officials may not reinitiate interrogation without counsel present whether or not the accused has consulted with his attorney. This case takes EDWARDS v Arizona one step further. Not only must the defendant have the opportunity to consult with his attorney, but also subsequent interviews initiated by officials must not be conducted unless counsel is present.

MONTEJO v Louisiana (The Right to Counsel During Custodial Interrogation) bulletin no. 340. The defendant was arrested for Homicide/Robbery. Police advised him of his Miranda rights and he confessed. Several days later he appeared before a judge for his "72 hour hearing" – a preliminary hearing required by state (Louisiana) law. At the hearing, the judge appointed a lawyer to represent the defendant. The defendant remained mute during this hearing. After attending the hearing the police contacted MONTEJO, gave him a MIRANDA warning, and asked him to accompany them so they could retrieve the gun that was used in the homicide; he agreed to do so. During this trip, MONTEJO wrote a letter of apology to the victim's wife. The letter was used at his trial. He was convicted and sentenced to death. He argued that the letter should not have been used at his trial because the court had appointed counsel for him and that precluded the police from contacting him without counsel being present. The court ruled that because he had remained mute during the "72 hour hearing" he did not request counsel and the police were entitled to contact him. Louisiana, like about one-half of the states, appoints counsel for indigent defendants during this hearing. In Alaska, on the other hand, it is mandated (Criminal Rule 39(2)); requires the court to inform the defendant of his right to counsel, and the fact that the court will appoint one if he is indigent, and will not proceed without counsel unless the defendant himself knowingly waives the right to counsel. So it would appear that this U.S. Supreme Court case will have little effect on Alaska.

Rhode Island v INNIS (The Right to Counsel - Voluntary Waiver) bulletin no. 153. Two officers who were discussing the case amongst themselves and not including the defendant in the conversation, were transporting the defendant, who was under arrest. The defendant interrupted the conversation and volunteered information. He continued to volunteer information even though he was again advised of his *Miranda* rights. The defendant was not being questioned and there was no "fundamental equivalent" of questioning since the officers did not know there was a reasonably likely chance the conversation would elicit a response from the defendant.

BREWER v Williams (The Right to Counsel - Involuntary Waiver) bulletin no. 154. An officer was transporting the defendant, who was under arrest. The defendant never "knowingly and intelligently" relinquished his *Miranda* rights when he gave information, and it was clear his intention was to refuse to be interrogated until his attorney was present. In this case, the officer deliberately set out to elicit information from the defendant by engaging in a conversation without directly asking questions. It is possible to have the "fundamental equivalent" of questioning while involving the defendant in a conversation without asking any questions.

TAGALA v State (Non-Custodial Interrogation) bulletin no. 158. A non-custodial interview was properly conducted with a shooting suspect without advisement of *Miranda* rights. A second interview was held, but this time *Miranda* warnings were given. During this second interview, the suspect invoked a limited assertion of his right to remain silent by refusing to discuss his involvement in drug sales, but at the same time indicating he was still willing to discuss the shooting. This limited assertion was found to be proper and discussions about the shooting after the limited assertion were admissible.

KOCHUTIN v State (The Right to Counsel During Custodial Interrogation) bulletin no. 161/186. A custodial interview was held with a suspect (who was in continuous custody for another crime) one year after his attorney advised authorities that the suspect was not to be interviewed without the attorney present. Police were required to notify the suspect's attorney prior to the police initiated interview as required in EDWARDS v Arizona and MINNICK v Mississippi and the subsequent confession was suppressed. This case was REVERSED.

It was later learned that KOCHUTIN was not in continuous custody, and as such the 1986 police interviews did not violate the EDWARDS rule. Given the break in custody, the Court concluded that the circumstances, as a whole, support the conclusion that KOCHUTIN voluntarily waived his *Miranda* rights.

MOSS v State (Custodial Interrogation of Person Not Under Arrest) bulletin no. 166. A search warrant was served on a residence with weapons drawn. The occupants were told they would be allowed to leave, but not until the search was completed. A guard was posted at the door and the occupants' movement was restricted while inside the residence. In this situation, a reasonable person would feel that he or she is in police custody and *Miranda* warnings must be given before any questioning.

GEORGE v State (Volunteered Statement - Failure to Tape Record Statement) bulletin no. 172. The suspect, already in custody for a different offense, told the jailer he pushed someone into the water causing his death. An officer interviewed the suspect after *Miranda,* but without a functioning tape recorder. The next day, another officer interviewed the suspect, who gave a different account of the facts, but this time with a functioning tape recorder. Testimony was not suppressed because 1) the statement made to the jailer was voluntary and not the product of custodial interrogation; and 2) the first interview lack of taping was excused due to the remote location of the arrest and the lack of spare tape recorder equipment. The HARRIS rule does not prohibit admission of a defendant's statement if "no testimony is presented that the statement is inaccurate or was obtained improperly," even though it was not taped. The tape recording requirement is justified because this provides an objective means for evaluating what occurred during interrogation.

CARR v State (Miranda/Right to Counsel) bulletin no. 174. Two people who had been living together were both imprisoned for unrelated crimes. A child previously living with the couple reported that the male adult had sexually abused her. A GLASS warrant was obtained and the female called the male and incriminating statements were recorded. Both were still imprisoned and later the male made additional incriminating statements in a face-to-face interview with troopers with proper *Miranda* warnings. The initial conversation did not amount to *Miranda* custody because the circumstances were such that 1) there were no inherently compelling pressures at work to undermine the individual's will to resist and compel him to speak where he would not otherwise do so freely; 2) the circumstances were not present where a reasonable person would not feel free to leave or break off the conversation; 3) incarceration alone does not automatically trigger *Miranda;* and 4) the male was not under any degree of compulsion to take the call and not inhibited from terminating the call. The interaction of custody and official interrogation was not coercive in this situation. The second issue related to whether the male's right to counsel was violated since an attorney for the related child custody issues represented him. In this case 1) the right to counsel is not triggered by purely investigative efforts since the suspect had not been accused at this point; and 2) the right to counsel is case specific and the child custody issue was not sufficiently related to the assault case.

State v Barry ANDERSON (Miranda Does Not Apply to Statements Elicited by a False Friend) bulletin no. 299. ANDERSON was arrested for robbery. He invoked his MIRANDA rights and asked for legal counsel. ANDERSON was unable to make bail and was incarcerated. Police suspected that he was also involved in a separate robbery/homicide. Police enlisted the aid of a friend who agreed to wear a wire (GLASS warrant) and visit ANDERSON at the jail to attempt to elicit incriminating statements from him. ANDERSON was subsequently charged with the robbery/homicide in part due to the statements he made to his “false friend” Court ruled that using the “reasonable objective person test” (HUNTER v State) that ANDERSON was not in custody for purposes of MIRANDA. The court said that ANDERSON could have either refused to visit with the friend or simply hung up the phone used during the visit.

HIGGINS v State (Custodial Interrogation of Person Not under Arrest) bulletin no. 188. A search warrant was served under high risk conditions (i.e. weapons drawn, etc.). After the situation was secure, HIGGINS was told she was not under arrest and was free to leave, but her movements during this time were somewhat restricted in that she was told where to stand and not to move. Although she understood what she was told about being free to leave and not being under arrest, the judge who listened to a tape recording from the scene ruled that the situation was charged with the tone of control and found that under the totality of the circumstances, a reasonable person in HIGGINS' position would have felt restrained regardless of what she was told.

MOTTA v State (Non-Custodial Interrogation Becomes Custodial Interrogation) bulletin no. 197. Officers asked MOTTA if he would be willing to visit the station for an interview. He was not advised of his *Miranda* rights, but was assured he was not under arrest and would be allowed to leave. About three hours into the interview, several events happened which turned the interview into a custodial interview: 1) the tone became confrontational when evidence obtained by a search warrant did not match his statements; 2) Officers left the interview room and told MOTTA to “just sit tight - relax”; and 3) when MOTTA asked to go to his vehicle to get a pack of cigarettes, the Officers refused and got the cigarettes for him. An interview becomes custodial when a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

COLE v State (Involuntary Confession) bulletin no. 206. During an interview, the defendant eventually confessed after the officer threatened the defendant with a court ordered polygraph, stated falsely that incriminating evidence was available, and other reassurances that he would get help. The confession was involuntary in that although ordinarily promises and inducements are not improper, the threat of a polygraph and other psychological coercion was, considering the totality of the circumstances improper.

WEST v State (Barricaded Subject, *Miranda* Not Required) bulletin no. 207. A barricaded suspect, while being sought for one crime, made incriminating statements about a separate crime in which he was subsequently charged while still in the barricaded situation. It was determined that *Miranda* was not required in this case since the conversation was not a custodial interrogation.

ANINGAYOU v State (Interview Becomes Custodial When Threat to Arrest for Another Crime is Made) bulletin no. 219. During a non-custodial interview, the following threat was made "… if you don't cooperate, I'm telling you right now that you can go to jail." After that threat, an incriminating statement was made. This statement was suppressed because the interview then became custodial for purposes of *Miranda*. A reasonable person in the suspect's position would have felt he was not free to leave or break off questioning.

MILLER v State (Involuntary Confession When You Promise Not To Prosecute) bulletin no. 244. Police assure if the fire was caused by an accident that they would not arrest and charge him. He confessed to setting the fire by accident and, in spite of the police promise, the DA elected to prosecute on negligence theory. Court threw out confession.

Texas v COBB (Right to Counsel is Offense Specific) bulletin no. 246. COBB is in jail, represented by counsel, when police interviewed him about a double homicide. The police do not notify Cobb's lawyer about the interview. His right to counsel did not bar the police from interviewing him about the murders.

State v Garrison (Right to Counsel Attaches When Custodial Interrogation Occurs or When Adversary Proceedings Commences) bulletin no. 304. Victim was found shot to death on 11-1-00. Police learned that GARRISON was the last person to see the victim alive. GARRISON was contacted on 11-2-00, given his Miranda warning and interviewed. He denied all knowledge of the homicide. Police contacted him again on 11-4-00; he still denied all knowledge. On 11-4-00, GARRISON (unbeknown by the police) contacted attorney Chad Holt. On 12-12-00 police again contacted GARRISON. He said on advice of counsel he was not going to talk to them. Police also contacted attorney Holt who informed the police that GARRISON would not be talking to them. In January of 2001 police learned that GARRISON's sister had pawned a gun of the same caliber used in the homicide. Police seized the gun and subjected it to testing. The test was inconclusive. Police contacted GARRISON on 1-18-01 and told him that the gun had been retrieved from the pawn shop and tested by experts. GARRISON was not given a Miranda warning. Police did not tell GARRISON that the tests were inconclusive. GARRISON then said that he had sold the gun to the victim the day before he was murdered. He also said that he had discovered the victim's body and saw the gun on the floor. Thinking he may be considered a suspect, and because he was on parole, he decided to remove the gun from the scene. Police asked him if he would be willing to take a polygraph test. He said he would and drove himself to the police station. Prior to the polygraph test he was given his Miranda warning and he signed the waiver. GARRISON was subsequently charged with the murder and also with evidence tampering. He moved to suppress on the grounds that he was in custody during the 1-18-01 interview and that his right to counsel had already attached. The court ruled that the statement was good because the police did not subject GARRISON to custodial interrogation and no adversary proceedings had commenced, so the police did not have to notify his lawyer.

State v SMITH (Non Custodial Interrogation in Police Car) bulletin no. 255. SMITH was asked to get into police car for an interview. He was a suspect in a forcible rape. The trooper said "… well tell me the truth and ... I'm not going to arrest you." SMITH did not confess, but made some admissions. He asked for a lawyer and the interview was terminated. For purposes of *Miranda,* he was not in custody.

BEAUDOIN v State (Failure To Give MIRANDA Warning Did Not Negate Subsequent Confession), bulletin no 261. Defendant called 911 to report that he had fatally stabbed his mother. He stayed on the line and

furnished details of the event. He also told first responders including EMT, a private security guard and AST "rookie" trooper. The rookie trooper ultimately put defendant in back of locked patrol car and continued the questioning. The rookie failed to give subject the MIRANDA warning. Shortly thereafter, an AST Sgt. arrived who did give MIRANDA warning and later transported subject to investigators who also gave MIRANDA and obtained yet another statement. Subject argued that by rookie's failure to give MIRANDA, all subsequent confessions were fruit of poison tree. Court ruled admissible because of "stream of legally obtained (EMT, 911, private security guard) confessions.

JONES v State (Promise to "Go Off The Record" During Custodial Interview Renders Confession Involuntary), bulletin no. 265. Detective assured defendant that his statement was not being recorded and that they were talking off the record. In this case, the defendant did not give incriminating statements until he was assured by the police that they were talking off the record. The promise that a statement will remain confidential is similar to promises of leniency or immunity from prosecution.

VENT v State (Voluntary Confession of a Juvenile) bulletin no. 266. Although the 1st of 3 statements was suppressed, it did not taint the remaining two; juvenile made proper MIRANDA waiver and gave volunteered statement; police lied about strength of case and **psychology of police interviews.** Juvenile was 17 years and 11 months at the time of his arrest for the robbery, sexual assault and murder of a fifteen year old boy. He was interviewed on 3 occasions. The judge suppressed the first statement, but allowed the remaining two to be admitted. The juvenile had slept and conferred with his mother between 1 & 2 and slept again between 2 & 3. He made a voluntary confession in spite of the fact that the police lied to him about evidence they said they had. The defense expert who was called to testify about the risk of false confessions was not allowed to testify.

CHAVEZ v MARTINEZ (Failure To Give MIRANDA Warning Is Not Grounds For A Federal 1983 Suit), bulletin no. 267. MARTINEZ was shot by police. He was transported to the hospital where a police Sergeant, who failed to give him the MIRANDA warning interviewed him. No criminal charges were filed, but MARTINEZ filed a 1983 (civil) suit against the officer. The court said that the officer is entitled to "qualified immunity" because the statements given were not used at a criminal trial so there was no Fifth Amendment violation.

U.S. v PATANE (Failure to give MIRANDA warnings does not require suppression of physical fruits of voluntary statement) bulletin no. 285. During arrest for harassment at his residence defendant "cut off" the officer when he began the MIRANDA warnings by stating he knew his rights. The officer did not attempt to complete the warning. The officer was aware that defendant was in possession of an automatic pistol and asked him where it was located. The defendant initially said "I'm not sure I should tell you anything about the Glock because I don't want you to take it from me." The officer persisted and the defendant subsequently told the officer where the pistol was located and gave the officer permission to seize it. Defendant was subsequently charged with being a felon in possession of a firearm. He argued that the failure by the officer to give a MIRANDA warning required the court to suppress the (gun) evidence. Court ruled that this is non-testimonial evidence and that the fruits (the gun) of the unwarned statement do not require suppression.

SELECTED JUVENILE CASES

QUICK v State (Juvenile Waiver of *Miranda* rights) (no bulletin). In determining if the juvenile made a "reasoned (intelligent) *Miranda* waiver," the court will consider such factors as his age, intelligence, length of questioning, education, prior experience with law enforcement officers, mental state at the time of the waiver and whether there had been a prior opportunity to consult with parent, guardian or attorney.

WARDEN v ALVARADO (Non-Custodial Interview of Juvenile at Police Station Does Not Require Miranda Warning) bulletin no. 281. Victim was killed during attempted car jacking. Several months' later police developed Alvarado, who was 17 YOA at the time, as a suspect. Detectives contacted both him and his parents and asked him to come to the police station. Upon arrival the detectives informed the parents that the interview would not "take very long." The parents waited in the lobby and Alvarado was taken to an interview room. The entire interview, which was tape-recorded, lasted about two hours. During the interview Alvarado was asked on several occasions if he wanted to take a break; he declined. Alvarado admitted his involvement in the homicide and also that he had assisted the "shooter accomplish" hide the gun. He was never advised of his Miranda rights. After the interview he left the police station with his parents. Several months later he was arrested and charged with the murder. For purposes of Miranda, Alvarado was not in custody. The test is (1) circumstances surrounding the interview and (2) would a "reasonable person" feel free to terminate the interview and leave. The court also said that their prior decisions regarding Miranda have not mentioned a suspect's age, much less mandated its consideration.

KALMAKOFF v State (Violation of Miranda in first two statements does not require suppression of statements taken in 3rd and 4th interviews) bulletin no. 334. **REVERSED BY SUPREME COURT SEE BULLETIN 356.** Police violates defendant's Miranda Rights when they interviewed him twice on the same day. He was allowed to go back to school and ultimately home. Police contacted him at his home, and in the presence of his grandparents, he admitted to the murder. Police also interviewed him on the following day, when they arrested him. He argued that because of the Miranda violation on the first two interviews, any information obtained thereafter, even if he was advised of Miranda, must be suppressed because of the poison tree doctrine. Court said statements were allowable because the defendant did not make any admissions about the murder during the first two interviews. He did admit to other violations (minor consuming alcohol and taking a gun from a residence) during the first two interviews but made no admissions about the murder.

New Jersey v T.L.O. (Search Of Student By School Officials) bulletin no. 90. The Fourth Amendment does apply to teachers who are employed by public (state) operated schools. However, warrantless searches can be conducted based on reasonable suspicion. There is a different standard for the teacher as compared to the police officer.

SAFFORD SCHOOL DISTRICT v Redding (Strip Search by School Officials) bulletin no. 341. When school officials required a 13-year-old female to pull her bra out and to the side and shake it, and to pull the elastic on her underpants, thus exposing her breasts and pelvic area to some degree, the court ruled that lacking sufficient suspicion to extending the search to this degree violates the Fourth Amendment.

RIDGLEY, PLUMLEY and BOSCH v State (Knowing & Intelligent Waiver of *Miranda* by Juvenile) bulletin no. 95. Since the State could not establish that the juvenile "knowingly and intelligently" waived his rights in confessing to murder, the confession was suppressed. (See bulletin no. 108 - Decision REVERSED.)

State v RIDGLEY (Knowing and Intelligent Waiver of *Miranda* by Juvenile) bulletin no. 108. See bulletin no. 95. The Alaska Supreme Court reversed the Court of Appeals and found a knowing and intelligent waiver was made, thereby making the confession voluntary.

J.R.N. v State (Notification of Parents Before Subjecting In Custody/Juvenile to Interrogation) bulletin no. 162. A custodial interview was held with a juvenile and he was given *Miranda* warnings. The juvenile was asked if he wanted his parents notified or present and the juvenile declined. Alaska Delinquency Rule 7(b)

requires notification of the parents, the court system and DFYS regardless of the wishes of the child. This is based on the assumption that juveniles may find it difficult to make informed, intelligent choices. This case was REVERSED on appeal (see bulletin 182).

State v J.R.N. (Juvenile's Right to Waive Presence of Parents During Custodial Interrogation) bulletin no. 182. A juvenile can waive his right to have his parents notified. Since a juvenile can waive constitutional rights against self incrimination and presence of counsel during interrogation, it follows that they can also waive their statutory right to have their parents immediately notified since the former rights are of a higher order than the statutory right.

Vernonia School District v Wayne ACTON (Mandatory Drug Testing For Students) bulletin no. 191. Mandatory drug testing for students who participate in school sports is not unreasonable under the Fourth Amendment.

BEAVERS v State (Involuntary Confession From 16 Year Old) bulletin no. 238. Troopers contacted BEAVERS at his place of employment and asked him to step outside so they could interview him. The interview took place in the police car. The officers said they needed to talk to him about robberies and that "if you try to hide it you are going to get hammered." He was assured he was not under arrest, but the court said, based on the comments of the officers, the confession was involuntary.

Florida v J. L. (Seizure of Juvenile Based on Anonymous Tip Lacked Probable Cause) bulletin no. 239. Anonymous caller reported that a young black male was at a particular intersection and was carrying a gun. Anonymous tip, in and of itself, is not sufficient to conduct pat down.

FITTS v State (Mother had Authority to Consent to Search of Bedroom Where Guest Resided With Her Son) bulletin no. 249. Two persons robbed a cab. Police learned that suspect FITTS was staying with 16-year-old boy, who turned out to be the second suspect. Juvenile's mother gave police her consent to search the bedroom where the two boys were staying. She had authority to consent to the search.

DOYLE v State, (Third Party Consent to Enter) bulletin no. 52. Son (estimated age between 11 and 14) of defendant gave officers consent to enter residence, whereupon defendant (father) was arrested. Court ruled that the son had the authority to permit officers to enter residence.

VENT v State (Voluntary Confession of a Juvenile) bulletin no. 266. Although the 1st of 3 statements was suppressed, it did not taint the remaining two; juvenile made proper MIRANDA waiver and gave volunteered statement; police lied about strength of case and **psychology of police interviews**, juvenile was 17 years and 11 months at the time of his arrest for the robbery, sexual assault and murder of a fifteen year old boy. He was interviewed on 3 occasions. The judge suppressed the first statement, but allowed the remaining two to be admitted. The juvenile had slept and conferred with his mother between 1 & 2 and slept again between 2 & 3. He made a voluntary confession in spite of the fact that the police lied to him about evidence they said they had. The defense expert who was called to testify about the risk of false confessions was not allowed to testify.